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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ENTROPIC COMMUNICATIONS,
LLC,

Plaintiff,

v.

DISH NETWORK CORPORATION,
et al.

Defendants.

ENTROPIC COMMUNICATIONS,
LLC,

Plaintiff,

v.

COMCAST CORPORATION, *et al.*,

Defendants.

Lead Case No.
2:23-cv-01049-JWH-KES

Related Case No.
2:23-cv-01048-JWH-KES

**REPLY IN SUPPORT OF
COMCAST'S MOTION TO
DISMISS THE CORRECTED
SECOND AMENDED AND
SUPPLEMENTAL COMPLAINT
UNDER FED. R. CIV. P. 12(b)(1)
AND 12(b)(6)**

Date: April 25, 2025

Time: 9:00 am

Dept: 9D

Judge: Hon. John W. Holcomb

**REDACTED VERSION OF
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I. INTRODUCTION¹

Entropic’s Opposition does not seriously argue that Comcast had pre-suit knowledge of any Asserted Patent, let alone any infringement of those patents. Instead, Entropic relies on its improper filing of this case to allege post-suit willful infringement and seeks reconsideration, yet again, of the Court’s rulings that it lacks subject-matter jurisdiction over claims of non-willful infringement. But Entropic’s post-suit willfulness allegations fail as a matter of both contract interpretation and willfulness law, and Entropic has provided no basis for reconsideration of the Court’s previous holdings, which are just as correct now as they were the first two times the Court addressed the issue. Because Entropic once again fails to adequately plead willful infringement of any Asserted Patent, the Court should dismiss the CSASC.

II. ARGUMENT

A. The Court Has Correctly Found That Its Subject-Matter Jurisdiction Is Limited to Willful Infringement

Implicitly acknowledging that it has again failed to plausibly allege willful infringement, Entropic devotes much of its Opposition to relitigating the issue of the Court’s subject-matter jurisdiction over non-willful patent-infringement claims. Opp. 8–14. But it provides no basis on which to reconsider the Court’s previous rulings on this issue, which are law of the case and are, in any event, correct.

As a threshold matter, Entropic’s suggestion that “constitutional standing

¹ In addition to those defined in Comcast’s Motion to Dismiss (Dkt. No. 595), this Memorandum uses the following abbreviations: (1) “Br.” means Comcast’s Memorandum of Points and Authorities in Support of its Motion to Dismiss (Dkt. No. 595); (2) “Opp.” means Entropic’s Opposition to Comcast’s Motion to Dismiss (Dkt. No. 605); (3) “Comcast Supp. Br.” means Comcast’s Supplemental Brief to Dismiss the FAC (Case No. 1048, Dkt. No. 129); (4) “Entropic Supp. Br.” means Entropic’s Supplemental Brief in Support of its Opposition to Dismiss the FAC (Case No. 1048, Dkt. No. 126); (5) “Hearing Tr.” means the transcript of the August 9, 2023 motion hearing and scheduling conference (Dkt. No. 186-4). Unless otherwise noted, emphasis has been added to quotations, and internal quotations, brackets, citations, and footnotes have been omitted.

1 has never been adequately briefed by the parties” and that the “Court gave no
2 explicit indication that constitutional standing was the basis for its decision”
3 (Opp. 13 n.1) is plainly wrong. This issue has been briefed and decided multiple
4 times. First, the parties briefed Comcast’s motion to dismiss the FAC and, at oral
5 argument, the Court explained: “It’s a ***constitutional issue of standing***. It’s kind of
6 ***how I view it***. Well, it’s how Comcast has teed it up.” Hearing Tr. at 103:20–21.
7 Then, at Entropic’s request, the parties filed supplemental briefing on
8 constitutional standing. *Entropic Commc’ns, LLC v. Dish Network Corp.*, 2024
9 WL 210975, at *1 (C.D. Cal. Jan. 12, 2024). After that briefing, as Entropic
10 concedes, the Court dismissed the FAC “based in part on a lack of constitutional
11 standing.” Opp. 13 n.1. And, finally, the Court denied Entropic’s motion for
12 reconsideration of that decision, addressing at length the jurisdictional issues the
13 parties argued in the supplemental briefing. *Entropic*, 2024 WL 210975, at *2–4.

14 There can be no reasonable dispute that constitutional standing has been
15 adequately briefed and ruled on. The Court’s finding that its subject-matter
16 jurisdiction is limited to claims of willful infringement against Comcast is thus law
17 of the case. *See, e.g., Grand Canyon Trust v. Provencio*, 26 F.4th 815, 821 (9th
18 Cir. 2022) (“The district court did not err in finding that the law of the case
19 doctrine applied to the issue of standing.”). Courts rely on the law-of-the-case
20 doctrine to avoid having to relitigate previously decided issues. *See Oliver v. SD-*
21 *3C LLC*, 2016 WL 5950345, at *9 (N.D. Cal. Sept. 30, 2016) (“The Court’s
22 analysis of [the] standing issue in its prior order is the law of the case, and the
23 Court will not repeat it here.”). And Entropic has not even attempted to establish
24 any of the grounds on which a party may seek reconsideration of an order. *See*
25 *Local Civil Rule 7-18* (“(a) a material difference in fact or law from that presented
26 to the Court that, in the exercise of reasonable diligence, could not have been
27 known to the party moving for reconsideration at the time the Order was entered,
28

1 or (b) the emergence of new material facts or a change of law occurring after the
2 Order was entered, or (c) a manifest showing of a failure to consider material facts
3 presented to the Court before the Order was entered.”).

4 In any event, the Court’s prior rulings are correct. The Constitution limits
5 federal judicial power to deciding “cases” or “controversies.” U.S. Const. art. III,
6 § 2. Constitutional standing flows from this requirement and limits the category of
7 litigants empowered to maintain a lawsuit in federal court. *See Apple Inc. v.*
8 *Qualcomm Inc.*, 17 F.4th 1131, 1135 (Fed. Cir. 2021). “[A] suit brought by a
9 plaintiff without Article III standing is not a ‘case or controversy,’ and an Article
10 III federal court therefore lacks subject matter jurisdiction over the suit.” *Cetacean*
11 *Cnty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004).

12 To establish Article III standing, a party must demonstrate (1) an “injury in
13 fact” that is (2) “fairly traceable” to the defendant's challenged conduct and is (3)
14 “likely to be redressed by a favorable judicial decision.” *Apple*, 17 F.4th at 1135.
15 “[T]he absence of any one element” deprives a plaintiff of Article III standing and
16 “require[s] dismissal.” *Whitmore v. Fed. Election Comm’n*, 68 F.3d 1212, 1215
17 (9th Cir. 1995). Here, MaxLinear did not have the right to sue Comcast for non-
18 willful patent infringement and thus could not have transferred such a right to
19 Entropic when it sold the Asserted Patents. Without the right to sue Comcast,
20 Entropic suffers no injury in fact from any alleged non-willful infringement and
21 thus lacks constitutional standing to assert such claims.

22 Courts routinely dismiss patent cases for lack of subject-matter jurisdiction
23 where the plaintiff lacks Article III standing. *See Comcast Supp. Br. 2* (collecting
24 cases). As particularly relevant here, courts regularly dismiss patent-infringement
25 claims for lack of subject-matter jurisdiction where a covenant not to sue covers
26 the alleged infringement. *See, e.g., Bluestone Innovations LLC v. Nichia Corp.*,
27 2013 WL 1729814, *3–4 (N.D. Cal. Apr. 22, 2013); *Shipping & Transit LLC v.*
28

1 *Neptune Cigars, Inc.*, No. 2:16-03836-AG-SS, Dkt. No. 25, at 1–2 (C.D. Cal. Sept.
2 12, 2016). Such dismissals follow from the principle that, “to assert standing for
3 patent infringement, the plaintiff must demonstrate that it held enforceable title at
4 the inception of the lawsuit.” *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d
5 1304, 1309 (Fed. Cir. 2003) (emphasis omitted). Without such an enforceable
6 right, a plaintiff lacks an “injury in fact” and thus lacks standing. *See Morrow v.*
7 *Microsoft Corp.*, 499 F.3d 1332, 1340–1341 (Fed. Cir. 2007). It is for this reason
8 that the Court previously found that Entropic’s position is “inconsistent with
9 decisions dismissing cases under similar circumstances.” *Entropic*, 2024 WL
10 210975, at *4 (citing *Bluestone*, 2013 WL1729814, at *4).²

11 Entropic points to two Federal Circuit decisions to support its position that
12 Article III standing only requires that it merely allege that it possessed
13 “exclusionary rights in the asserted patents” and that Comcast “infringe[s] its
14 exclusionary rights.” Opp. 11–12 (citing *Intell. Tech LLC v. Zebra Techs. Corp.*,
15 101 F.4th 807 (Fed. Cir. 2024), and *Lone Star Silicon Innovations LLC v. Nanya*
16 *Tech. Corp.*, 925 F.3d 1225 (Fed. Cir. 2019)). But neither one involved a covenant
17 not to sue or disturbed what is required to plead “injury in fact.” Contrary to
18 Entropic’s suggestion, conclusory allegations of possession of exclusionary rights
19 are insufficient to adequately plead “injury in fact.” In *Lone Star* and *Zebra*, the
20 Federal Circuit looked beyond the pleadings to the underlying agreement to
21 determine whether each plaintiff had the right to “exclude others from practicing
22 [the] invention” to adequately plead Article III injury. *Lone Star*, 925 F.3d at 1234;
23 *see Zebra*, 101 F.4th at 813–14. Neither decision suggests a plaintiff’s allegations
24 can overcome its **lack** of those rights under the operative agreement. Because
25 MaxLinear did not possess the right to exclude Comcast from practicing the

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27 ² Whether a case involved a declaratory-judgment action is irrelevant because
28 standing requirements for declaratory-judgment actions are not simply statutory;
rather, they are “coextensive” with the standing requirements under Article III.
ArcelorMittal v. AK Steel Corp., 856 F.3d 1365, 1369 (Fed. Cir. 2017).

1 asserted patents under the covenant not to sue, it could not have transferred that
2 exclusionary right to Entropic. Thus, *Lone Star* and *Zebra* are inapposite.

3 Contrary to Entropic’s contention, the issue here is not whether Comcast
4 used Entropic’s patents without authorization under the Patent Act. Opp. 11. That
5 is an issue of a district court’s original jurisdiction under 28 U.S.C. § 1338. Rather,
6 as explained above, the issue here is a threshold question of whether Entropic has
7 an enforceable right that could result in an injury-in-fact, which is a question of
8 Article III standing. Entropic does not have such a right for non-willful
9 infringement, and thus those claims must be dismissed. *See, e.g., Bluestone*, 2013
10 WL 1729814, at *3–6; *see also King Pharms., Inc. v. Eon Labs, Inc.*, 616 F.3d
11 1267, 1282 (Fed. Cir. 2010) (finding no “actual case or controversy” where
12 patentee covenanted not to sue); *cf. Revolution Eyewear, Inc. v. Aspex Eyewear,*
13 *Inc.*, 556 F.3d 1294, 1300 (Fed. Cir. 2009) (where patentee did not offer a
14 covenant covering current products, it “preserved this controversy”).

15 Finally, Entropic contends that if the Court finds that it lacks standing, then
16 it cannot “adjudicate the sufficiency of Entropic’s willfulness allegations” or
17 dismiss with prejudice. Opp. 14. But that too is wrong—indeed, the Court already
18 adjudicated the sufficiency of Entropic’s willfulness allegations when considering
19 the FAC. *Entropic Commc’ns, LLC v. Comcast Corp.*, 702 F. Supp. 3d 954, 965–
20 967 (C.D. Cal. 2023). As Entropic concedes, the Court has an obligation to
21 “exercise the jurisdiction given [it].” Opp. 13. The Court has held that it has
22 subject-matter jurisdiction over Entropic’s claims of willful infringement.
23 *Entropic*, 702 F. Supp. 3d at 963.³ Thus, while Entropic’s claims of non-willful
24 infringement must be dismissed for lack of subject-matter jurisdiction under Rule
25 12(b)(1), the Court must adjudicate whether Entropic has adequately pled willful
26

27 ³ In contrast, in *Arbaugh v. Y&H Corp.*, the complaint included no other claims
28 over which the court had jurisdiction because the remainder were all supplemental
state law claims. 546 U.S. 500, 514 (2006).

1 infringement. On its third attempt, and for the reasons below, Entropic has again
2 failed to do so. Accordingly, those claims should be dismissed with prejudice.

3 **B. Entropic Fails to Plausibly Allege Willful Infringement of Any**
4 **Asserted Patent**

5 The Court has previously found that, because of the covenant not to sue,
6 Entropic may only assert a given patent against Comcast if it adequately pleads
7 that Comcast willfully infringed that particular patent. *Entropic*, 702 F. Supp. 3d at
8 964–965. To adequately plead willful infringement of a patent, Entropic must
9 plausibly allege that Comcast had knowledge of that patent and its infringement of
10 that patent. *Id.* at 965. Notwithstanding that clear directive, Entropic does not
11 plausibly allege either element for any Asserted Patent. Instead, Entropic relies on
12 its own litigation conduct and Comcast’s alleged involvement with MoCA, both of
13 which fail as a matter of law.

14 **1. Entropic’s litigation conduct cannot overcome the covenant**

15 **a. The improper suit cannot trigger the covenant’s exemption**

16 Entropic cannot rely on its own improper filing of this suit to trigger the
17 willfulness exemption to the covenant not to sue because such an interpretation of
18 the covenant would render it meaningless. Br. 14–15. If Entropic could simply file
19 suit and then rely on the subsequent litigation to allege willful infringement falling
20 within the covenant’s exemption, then the covenant would have no effect at all.
21 Comcast would be forced to litigate every infringement case, which is the very
22 thing the covenant was meant to avoid. *Cf. Entropic*, 2024 WL 210975, at *4.

23 New York law makes clear that a contract provision should not be rendered
24 meaningless and that a party cannot benefit from its own breach (in this case,
25 bringing a suit prohibited by the covenant).⁴ Br. 14–15. Entropic’s only response is

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27 ⁴ Entropic’s suggestion that filing the original complaint did not breach the
28 covenant not to sue because the complaint included boilerplate claims of willful
infringement ignores that such claims were deficient, and thus there were no
properly pled claims of willfulness in that complaint (or any that followed).

1 to suggest that covenants are narrowly construed and that the covenant has no
2 bearing on Comcast's scienter. Opp 15–16. However, the case to which Entropic
3 points for the first argument, *Collins & Aikman Products Co. v. Sermatech*
4 *Engineering Group, Inc.*, involved a contract that “nowhere contain[ed] an express
5 covenant not to sue.” 297 A.D.2d 248, 249–250 (N.Y. App. Div. 2002). It is thus
6 inapplicable to the express covenant not to sue in the VSA. As to the second
7 argument, the simple fact that Entropic filed a complaint with infringement charts
8 says nothing about Comcast's knowledge of any infringement. To the contrary,
9 Comcast asserts in this case that all the Asserted Patents are both invalid and not
10 infringed, and the Court has already invalidated five of them. Far from showing
11 knowledge of infringement, the litigation has thus far confirmed Comcast's belief
12 that it does not infringe a valid patent. But, regardless, the covenant cannot require
13 Comcast to litigate the entire case to prove it is correct, or else the covenant would
14 have failed to prevent the very suit it was designed to stop.⁵

15 **b. Entropic cannot plausibly plead willful infringement based**
16 **on its own litigation conduct**

17 Entropic's post-suit willfulness theory also fails as a matter of law. Even
18 after *Halo*, the Federal Circuit has explained that generally “willfulness will
19 depend on . . . **prelitigation** conduct.” *Mentor Graphics Corp. v. EVE-USA, Inc.*,
20 851 F.3d 1275, 1295 (Fed. Cir. 2017). Thus, as Comcast established in its opening
21 brief, the weight of district-court authority, including in this District and Circuit,
22 holds that willful infringement cannot be premised on “post-suit knowledge.”
23 *Ravgen, Inc. v. Quest Diagnostics Inc.*, 2022 WL 2047613, at *3 (C.D. Cal. Jan.

24
25 _____
26 ⁵ Entropic confusingly argues that the VSA is not a license and that a license for
27 non-willful infringement is nonsensical. Opp 16 & n.3. Of course, licenses
28 regularly cover non-willful infringement, and Entropic's Opposition argues that the
covenant should be treated like a license. Opp 11–12. In any event, the covenant,
by its own terms, prohibits filing of suit for non-willful infringement and Entropic
cannot invoke the covenant's exemption by doing that very thing.

1 18, 2022); *see also DMF, Inc. v. AMP Plus, Inc.*, 2024 WL 1796396, at *20 (C.D.
2 Cal. Apr. 25, 2024) (agreeing “with the reasoning of the majority of other courts in
3 this District” and rejecting the argument that “a plaintiff can plead willfulness
4 exclusively on post-suit knowledge”); Br. 16–18 (collecting cases). Entropic does
5 not meaningfully distinguish any of these decisions, asserting only that they are
6 “non-precedential.” Opp. 16. But not one decision that Entropic cites is binding on
7 this Court, and none refute the proposition that filing a complaint is not enough
8 because “[t]his post-suit fact pattern characterizes every infringement action.”
9 *Ravgen*, 2022 WL 2047613, at *3; *see also DMF*, 2024 WL 1796396, at *20.

10 Indeed, every single one of Entropic’s post-*Halo* decisions from this
11 District, Opp. 17 n.5, holds that mere knowledge of patents through a complaint
12 and continued infringement—like Entropic alleges here—are “**not sufficient** to
13 state a claim for willful infringement.” *RJ Tech., LLC v. Apple, Inc.*, 2023 WL
14 3432237, at *8 (C.D. Cal. Mar. 23, 2023) (dismissing willful infringement claim
15 because “continued use of the accused products despite knowledge of the asserted
16 patent” through the “complaint” was insufficient); *Parity Networks, LLC v. Moxa*
17 *Inc.*, 2020 WL 6064636, at *5 (C.D. Cal. Sept. 11, 2020) (dismissing willfulness
18 claims because “continued infringement of the Asserted Patents following receipt
19 of the original complaint” is insufficient); *see also Vaporstream, Inc. v. Snap Inc.*,
20 2020 WL 136591, at *20–21 (C.D. Cal. Jan. 13, 2020) (finding no willfulness
21 because “the majority of district courts in the Ninth Circuit have held that
22 ‘knowledge and continued infringement alone’ are insufficient to support a claim
23 for willful infringement,” and plaintiff pointed to nothing more than “typical
24 infringement”). Entropic’s only other cited decisions from this Circuit are either
25 inapposite or support Comcast’s position.⁶ And Entropic’s cited decisions from

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27 ⁶ *Monolithic Power Sys., Inc. v. Silergy Corp.* granted a motion to dismiss
28 willfulness allegations where the plaintiff failed to allege facts “that the defendants
acted with a level of intent that is more culpable than the typical infringer.” 127 F.
Supp. 3d 1071, 1077 (N.D. Cal. 2015). *MyMedicalRecords, Inc. v. Jardogs, LLC*

1 outside of this Circuit contradict *Mentor Graphics*.⁷

2 Entropic’s assertion that Comcast’s position conflicts with *Halo* or
3 “conflat[es] willful patent infringement and enhanced damages under Section
4 284,” Opp. 19, is also wrong. *Halo* did not address a post-suit theory, and requiring
5 pre-suit notice to plead willfulness is not inconsistent with requiring egregious
6 conduct to enhance damages. It is certainly true that some courts require pleading
7 egregious conduct in addition to pre-suit notice, but there are “many” additional
8 reasons to require pre-suit notice, “among them that a complaint can’t constitute an
9 element of a claim that it purports to raise, and that it would mean all infringement
10 suits involve willful infringement.” *Pact XPP Schweiz AG v. Intel Corp.*, 2023 WL
11 2631503, at *5 (D. Del. Mar. 24, 2023).

12 It is Entropic that conflates willfulness and enhanced damages by arguing
13 that “[a] defendant with a good faith belief in its defenses has nothing to fear from
14 willful infringement because . . . it cannot be subject to enhanced damages.”

15
16 allowed willful-infringement claims to proceed against a defendant (AllScripts)
17 that had ***pre-suit*** knowledge of the patent based on a complaint filed in ***a different,***
18 ***earlier*** lawsuit against a company that AllScripts had recently acquired. 1 F. Supp.
19 3d 1020, 1025–26 (C.D. Cal. 2014). *Apple Inc. v. Samsung Elecs. Co.* found that
20 willfulness was supported by ***pre-suit*** “copying.” 258 F. Supp. 3d 1013, 1028
21 (N.D. Cal. 2017). And *Finjan, Inc. v. ESET, LLC* found that the complaint
22 expressly alleged notice “***prior*** to the filing of the lawsuit.” 2017 WL 1063475, at
23 *4 (S.D. Cal. Mar. 21, 2017). Additionally, *TeleSign Corp. v. Twilio, Inc.* is
24 irrelevant because it addressed the now-overruled *Seagate* standard and allowed
25 the plaintiff to pursue willful infringement because its failure to seek an injunction
26 was the sole grounds on which the defendant challenged the claim. 2015 WL
12765482, at *10–11 (C.D. Cal. Oct. 16, 2015). *Fluidigm Corp. v. IONpath, Inc.* is
27 also irrelevant because it considered the futility standard under Rule 15. 2020 WL
1433178, at *1 (N.D. Cal. Mar. 24, 2020). In fact, the *Fluidigm* court then
28 “join[ed] those district courts that do not generally allow the complaint to serve as
notice” in a different case, finding that the plaintiff failed “to adequately allege
willful infringement.” *Sonos, Inc. v. Google LLC*, 591 F. Supp. 3d 638, 646 (N.D.
Cal. 2022).

⁷ See, e.g., *Välinge Innovation AB v. Halstead New England Corp.*, 2018 WL
2411218, at *10–12 (D. Del. May 29, 2018) (confirming *Mentor Graphics* requires
pre-suit conduct to plead willfulness); *Adidas Am., Inc. v. Skechers USA, Inc.*, 2017
WL 2543811, at *4 (D. Or. June 12, 2017) (similar).

Opp. 20. The Federal Circuit has rejected this exact argument, holding that “a finding of willful infringement may have collateral consequences even for a party not ordered to pay enhanced damages, such as reputational injuries.” *Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274, 1295 (Fed. Cir. 2023). Deeming every defendant that simply continues its accused conduct while it defends a lawsuit a “willful” infringer is thus improper, and willfulness allegations that assert nothing more than knowledge through a litigation therefore cannot stand.

2. Entropic’s allegations related to Comcast’s pre-suit involvement in MoCA are insufficient

Beyond this litigation itself, the only facts that Entropic alleges to support willful infringement of the Asserted Patents is that Comcast was “an early and active member of MoCA” who “helped to develop the MoCA standard” and “would thus have *needed* to be aware of the patented technology that would be essential to the practice of the MoCA standard.” Opp. 22. But the Court already found such facts insufficient when dismissing the FAC because “allegations directed to general industry awareness” or “knowledge of a patent portfolio, as opposed to a specific, issued patent, do[] not support a claim for willful infringement.” *Entropic*, 702 F. Supp. 3d at 966; *see, e.g.*, FAC ¶¶ 84, 86–87, 90.⁸

As the Court has already held, Entropic must plead, on a per-patent basis, knowledge of the patent and its infringement thereof. *Entropic*, 702 F. Supp. 3d at 964–965. Yet the only allegations specific to a particular Asserted Patent in the CSASC concern an email to a *non*-Comcast address referencing the ’518 patent.

⁸ Entropic cites *Microsoft Corp. v. Motorola, Inc.*, 864 F. Supp. 2d 1023, 1027 (W.D. Wash. 2012), in support of its argument that Comcast “*needed* to be aware of the patented technology.” Opp. 22. But that is not a willful infringement case, and Motorola explicitly identified its patents and the standard to which they were essential in correspondence to Microsoft. *Microsoft*, 864 F. Supp. 2d at 1027–1029. Entropic’s reliance on *WCM Indus., Inc. v. IPS Corp.*, 721 F. App’x 959 (Fed. Cir. 2018), Opp. 22–23, similarly fails because the defendant had knowledge of the patents from a separate, antecedent lawsuit. *See id.* at 970.

CSASC ¶¶ 134–137. That email is insufficient to plausibly allege willful infringement of even that patent, let alone any others. To begin, Entropic mischaracterizes the email when it asserts that the email “states that the ’518 Patent is essential to the practice of MoCA.” Opp. 23. The email only states [REDACTED] [REDACTED] Dkt. No. 598-1 at 1, and Entropic does not contest that [REDACTED] [REDACTED] Br. 22–23. Regardless, this Court has already held that identifying an allegedly essential patent “does not plausibly demonstrate knowledge of infringement.” *Entropic*, 702 F. Supp. 3d at 965. More fundamentally, Entropic cannot overcome the fact that the email was *not to Comcast*. It thus cannot establish Comcast’s knowledge of the patent or of its alleged infringement.⁹

Entropic cites *Corephotonics, Ltd. v. Apple, Inc.* to suggest that its allegations support willful blindness. 2018 WL 4772340 (N.D. Cal. Oct. 1, 2018). But “Corephotonics gave Apple files” describing its pending patent applications and asserted patents, and “an Apple negotiator told Corephotonics that even if Apple infringed [Corephotonics’ patents], it would take years and millions of dollars in litigation before Apple might have to pay something.” *Id.* at *9 (cleaned up). When Apple released an allegedly infringing product, “Corephotonics offered to share its patents with Apple’s technical and business personnel,” but Apple sent Corephotonics an email stating, “[p]lease do not send any patents to us until further notice.” *Id.* at *9. That fact pattern stands in stark contrast to one email allegedly sent [REDACTED]

⁹ Entropic does not contest that the purported email—[REDACTED]—cannot be the basis to support the inference that Comcast knew about the ’759 Patent (Br. 22–23). Opp. 23–24. Nor could it because allegations of willfulness must be made on a *per*-patent basis, *Entropic*, 702 F. Supp. 3d at 964–965, and knowledge of a specific patent cannot be inferred from mere knowledge of *other* patents, *Sonos*, 591 F. Supp. 3d at 643 (“Mere knowledge of a patent family or the plaintiff’s patent portfolio is not enough.”).

1 Finally, Entropic's invitations to ignore the pleading requirements for
2 willfulness should be rejected. First, Entropic complains about the specificity of
3 allegations that are required before discovery. Opp 21. But the law is that a
4 plaintiff must allege a defendant's knowledge of a patent and its infringement to
5 sustain a willfulness claim. *Entropic*, 702 F. Supp. 3d at 965. Entropic has not done
6 so, and it cannot conduct a fishing expedition in discovery to try to meet its
7 pleading requirements.¹⁰ Second, Entropic suggests that the knowledge
8 requirement and the Court's previous findings related thereto should be ignored in
9 favor of a "totality of the circumstances" test from *Graco, Inc. v. Binks Mfg. Co.*,
10 60 F.3d 785, 792 (Fed. Cir. 1995). Opp 22. But the "circumstances" to which
11 *Graco* referred were all after the defendant learned of the asserted patents (before
12 suit was filed). 60 F.3d at 792. Entropic cannot cobble together disjointed
13 allegations, none of which asserts knowledge of any specific Asserted Patent, let
14 alone how it was infringed.¹¹ No matter how it mixes and matches its allegations,
15 Entropic cannot replace those missing elements, and its willful infringement claims
16 must therefore be dismissed.

17 **III. CONCLUSION**

18 For the foregoing reasons, Comcast respectfully requests that this Court
19 again grant Comcast's motion to dismiss.
20
21
22

23 ¹⁰ Neither *Warn Industries* nor *Sonos* stands for the proposition that plaintiff is
24 entitled to discovery for evidence to meet the willfulness pleading standard.
25 Rather, in each case, the plaintiff pled sufficient pre-suit facts to sustain
26 willfulness. *Warn Indus., Inc. v. Agency 6 Inc.*, 660 F. Supp. 3d 924, 935 (E.D.
27 Cal. 2023) (notice based on defendant's awareness of prepublication grant and
28 cease-and-desist letter); *Sonos*, 591 F. Supp. 3d at 646 (notice based on an earlier-
filed declaratory judgment suit).

¹¹ Indeed, Comcast has already produced nearly two thousand documents, and
Entropic still has not been able to point to *any* document that supports willful
infringement.

1 Dated: April 11, 2025

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